IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 66 of 2007

Date of decision: 12.11.2007

Commissioner of Central Excise, Jalandhar

..... Appellant

Versus

M/s Max G.B. Limited (now M/s DSM Anti Infective India Ltd.)

.....Respondent

**Coram: Hon'ble Mr. Justice M.M.Kumar**
**Hon'ble Mr. Justice Ajay Kumar Mittal**

Present: Mr. Sanjiv Kaushik, Advocate,
for the appellant.

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**M.M.Kumar, J.**

The instant appeal has been filed by the revenue under Section 35 (G) of the Central Excise Act, 1944 challenging the order dated 29.11.2006 (P-5) pased by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, deleting the liability of the assessee-respondent to pay penalty.

A perusal of the impugned order shows that the assessee-respondent at the time, when the case was booked against it, were working under the provisions of Rule 173H of the Central Excise Rules, 1944 ( for brevity 'the Rules'). They had brought back the finished goods from their buyers by filing D-3 declaration and subsequent to reconditioning the returned goods, cleared the same without payment of duty as per provisions of Rule 173H of the Rules. The Tribunal has concluded that it could not now be said that the assessee-respondent had intention to remove the goods without payment of duty and that the provisions of Rule 173H were enacted to ameliorate the sufferings of assessee-respondent, so that they were not put to difficulty to make payment of duty twice. The Tribunal has further found that the provisions of Rule 173Q (1)(a) to (c)

were neither attracted to the present case nor any show cause notice with specific violation was issued to the assessee-respondent. The show cause notice has been held to be vague because the provisions of Rule 173Q of the Rules shall be applicable if there is wholesome violation of the provision with intention to avoid payment of duty. Hon'ble the Supreme Court in its judgment passed in the case of Amrit Foods vs. Commissioner of Central Excise, U.P. 2005 (190) E.L.T. 433 (S.C.) has held that the violation of any such provision like Rule 173Q has to be specific because it has number of other substantive sub sections.

After hearing the learned counsel at some length, we find that there is no merit in this appeal. The order passed by the Tribunal is passed on sound reasoning and deserves to be upheld. Accordingly, the appeal fails and the same is dismissed.

( M.M.KUMAR )
JUDGE

(AJAY KUMAR MITTAL )
JUDGE

November 12, 2007
pj